

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 96-50032-BC  
Honorable Thomas L. Ludington

ROBERT P. HIGGINS,

Defendant.

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**ORDER DIRECTING GOVERNMENT RESPONSE  
AND DENYING MOTION TO APPOINT COUNSEL**

Defendant Robert P. Higgins was sentenced to 15 years in prison by Judge Paul V. Gadola in 2005 after pleading guilty to one-count of possession with intent to distribute cocaine. 21 U.S.C. § 841(a)(1). On June 30, 2010, Defendant filed a motion contending that he served 889 days in state custody before beginning his federal sentence, and that the time was not properly credited under United States Sentencing Guidelines Manual § 5G1.3. It appears that Defendant is challenging the Bureau of Prisons' sentence calculation, but he has not identified any authorization for this Court to grant relief pursuant to a post-judgment motion. Nevertheless, the Court has reviewed the motion and believes that a response from the government is necessary to resolve the matter. *See* Rules Governing § 2255 Proceedings 5, 28 U.S.C. foll. § 2255.

Defendant has separately filed a motion seeking appointed counsel to assist him with his post-judgment motion. Although a district court may, in its discretion, appoint an attorney to represent a defendant seeking post-judgment relief, *See* Rules Governing § 2255 Proceedings 8(c), 28 foll. § 2255, 18 U.S.C. § 3006A, appointed counsel is not required, *Foster v. United States*, 345 F.2d 675, 676 (6th Cir. 1965). At this time, Defendant has not provided an adequate justification

for appointment of counsel. If it appears at a later time that appointed counsel is justified, the Court will reconsider his motion.

Accordingly, it is **ORDERED** that the government is **DIRECTED** to file a response to Defendant's motion [Dkt. # 30] on or before **August 6, 2010**.

It is further **ORDERED** that Defendant's motion to appoint counsel [Dkt. # 32] is **DENIED**.

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

Dated: July 12, 2010

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on July 12, 2010.

s/Tracy A. Jacobs  
TRACY A. JACOBS